



## **DEPARTMENT OF LABOR**

### **Employment and Training Administration**

#### **Labor Certification Process for the Temporary Employment of Foreign Workers in Agriculture in the United States: Adverse Effect Wage Rates for Non-Range Occupations in 2022**

**AGENCY:** Employment and Training Administration, Department of Labor.

**ACTION:** Notice.

**SUMMARY:** The Employment and Training Administration (ETA) of the Department of Labor (DOL) is issuing this notice to announce the 2022 Adverse Effect Wage Rates (AEWR) for the employment of temporary or seasonal nonimmigrant foreign workers (H-2A workers) to perform agricultural labor or services other than the herding or production of livestock on the range.

AEWRs are the minimum wage rates the DOL has determined must be offered and paid by employers to H-2A workers and workers in corresponding employment so that the wages and working conditions of workers in the United States (U.S.) similarly employed will not be adversely affected. In this notice, DOL announces updates of the AEWRs.

**DATES:** These rates are applicable [INSERT DATE 14 CALENDAR DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Brian Pasternak, Administrator, Office of Foreign Labor Certification, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N-5311, Washington, DC 20210, telephone: (202) 693-8200 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone numbers above via TTY/TDD by calling the toll-free Federal Information Relay Service at 1 (877) 889-5627.

**SUPPLEMENTARY INFORMATION:**

The U.S. Citizenship and Immigration Services of the Department of Homeland Security will not approve an employer's petition for the admission of H-2A nonimmigrant temporary and seasonal agricultural workers in the U.S. unless the petitioner has received an H-2A labor certification from DOL. The labor certification provides that: (1) there are not sufficient U.S. workers who are able, willing, and qualified and who will be available at the time and place needed to perform the labor or services involved in the petition; and (2) the employment of the foreign worker(s) in such labor or services will not adversely affect the wages and working conditions of workers in the U.S. similarly employed. *See* 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c)(1), and 1188(a); 8 CFR 214.2(h)(5); 20 CFR 655.100.

### **Adverse Effect Wage Rates for 2022**

DOL's H-2A regulations at 20 CFR 655.122(l) provide that employers must pay their H-2A workers and workers in corresponding employment at least the highest of: (i) the AEWR; (ii) the prevailing hourly wage rate; (iii) the prevailing piece rate; (iv) the agreed-upon collective bargaining wage rate; or (v) the federal or state minimum wage rate in effect at the time the work is performed. Further, when the AEWR is adjusted during a work contract and is higher than the highest of the previous AEWR, the prevailing rate, the agreed-upon collective bargaining wage, the federal minimum wage rate, or the state minimum wage rate, the employer must pay that adjusted AEWR upon the effective date of the new rate, as provided in the applicable *Federal Register* Notice. *See* 20 CFR 655.122(l) (requiring the applicable AEWR or other wage rate to be paid based on the AEWR or rate in effect "at the time work is performed").

On November 5, 2020, DOL published a final rule, *Adverse Effect Wage Rate Methodology for the Temporary Employment of H-2A Nonimmigrants in Non-Range Occupations in the United States*, 85 FR 70445 (2020 AEWR Final Rule), to establish a new methodology for setting hourly AEWRs, effective December 21, 2020. However, on December 23, 2020, the U.S. District Court for the Eastern District of California issued an order enjoining DOL from implementing the 2020 AEWR Final Rule and ordering DOL to set the hourly

AEWRs using the methodology set forth in the *Temporary Agricultural Employment of H-2A Aliens in the United States*, 75 FR 6884 (Feb. 12, 2010) (2010 H-2A Final Rule). *See* Order Granting Plaintiffs’ Motion for a Preliminary Injunction, *United Farm Workers, et al. v. U.S. Dep’t of Labor, et al.*, No. 20-cv-1690 (E.D. Cal.), ECF No. 37. Pursuant to that order, DOL has used the methodology set forth in the 2010 H-2A Final Rule to determine the 2022 AEWRs.

Accordingly, the 2022 AEWRs for all agricultural employment (except for the herding or production of livestock on the range, which is covered by 20 CFR 655.200 through 655.235) for which temporary H-2A certification is being sought is equal to the annual weighted average hourly wage rate for field and livestock workers (combined) in the state or region as published by the U.S. Department of Agriculture (USDA) in the November 24, 2021 Farm Labor Report. The 2010 H-2A Final Rule, 20 CFR 655.120(c), requires that the Administrator of the Office of Foreign Labor Certification publish the USDA field and livestock worker (combined) wage data as AEWRs in a *Federal Register* Notice. Accordingly, the 2022 AEWRs to be paid for agricultural work performed by H-2A and workers in corresponding employment on and after the effective date of this notice are set forth in the table below:

TABLE—2022 ADVERSE EFFECT WAGE RATES

**State 2022 AEWRs**

Alabama	\$11.99
Arizona	\$14.79
Arkansas	\$12.45
California	\$17.51
Colorado	\$15.58
Connecticut	\$15.66
Delaware	\$15.54
Florida	\$12.41
Georgia	\$11.99

Hawaii	\$16.54
Idaho	\$14.68
Illinois	\$15.89
Indiana	\$15.89
Iowa	\$16.19
Kansas	\$16.47
Kentucky	\$13.89
Louisiana	\$12.45
Maine	\$15.66
Maryland	\$15.54
Massachusetts	\$15.66
Michigan	\$15.37
Minnesota	\$15.37
Mississippi	\$12.45
Missouri	\$16.19
Montana	\$14.68
Nebraska	\$16.47
Nevada	\$15.58
New Hampshire	\$15.66
New Jersey	\$15.54
New Mexico	\$14.79
New York	\$15.66
North Carolina	\$14.16
North Dakota	\$16.47
Ohio	\$15.89
Oklahoma	\$13.88

Oregon	\$17.41
Pennsylvania	\$15.54
Rhode Island	\$15.66
South Carolina	\$11.99
South Dakota	\$16.47
Tennessee	\$13.89
Texas	\$13.88
Utah	\$15.58
Vermont	\$15.66
Virginia	\$14.16
Washington	\$17.41
West Virginia	\$13.89
Wisconsin	\$15.37
Wyoming	\$14.68

**AUTHORITY:** 20 CFR 655.120(c).

Angela Hanks,

Acting Assistant Secretary for Employment and Training, Labor.

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